HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.4531 of 1999

O R D E R :

The petitioner is a subscriber of Telephone bearing No.66109 since 1989. The petitioner lodged "excess metering complaint" with respect to the bill dated 1-4-1993 for Rs.16,063/-, bill
dated 1-6-1993 for Rs.24,24,153/- and bill dated 1-8-1993 for Rs.15,828/-. Alleging that there is no proper response to the complaint, he filed O.P.No.259 of 1993 on the file of court of Principal Subordinate Judge, Vijayawada, for appointment of an arbitrator under Section 7B of the Indian Telegraph Act,1885 (for brevity 'the Act'). By order dated 27-3-1997, the learned Subordinate Judge directed the respondents to refer the matter to Arbitrator. The Director, Finance & Accounts (DFA) in the office of the General Manager, Telecom District, West Godavari District, was appointed as an Arbitrator. After adjudicating the dispute, the Arbitrator passed an award dated 8-1-1999 assailing which the present writ petition is filed.

In the counter affidavit accompanying the writ petition, the only ground urged in challenge to the impugned award is that the same is vitiated for non-compliance with the principles of natural justice, as the petitioner has not received any notices from the Arbitrator relating to the first two hearings dated 6-1-1998 and
10-2-1998. It appears, a representative of the petitioner company appeared before the Arbitrator on 25-4-1998 and requested some time for engaging an advocate. So the matter was adjourned to
6-5-1998. On that day, one Sri P.D.Prasad (the person who deposed the affidavit accompanying the writ petition) appeared before the Arbitrator along with an advocate. But in spite of request, the respondents did not furnish the statement of the Department. Thereafter the petitioner sent a claim statement to the Arbitrator requesting to inform the date of hearing. The Arbitrator neither informed any date of hearing, examined any witnesses nor marked any documents, but passed the award. The allegation that Sri P.D.Prasad is not authorized is denied in the writ

affidavit.

The Sub-Divisional Engineer (Commercial) in the office of the General Manager, Telecom, Vijayawada, has filed a lengthy counter affidavit on behalf of the respondents. The counter runs into nineteen pages and gives the history of various disputes raised by the petitioner company in relation to various bills from 1990 onwards. A reading of the counter affidavit – the averments of which are not denied by filing a reply affidavit; would sow that the petitioner company is in the habit of filing suits, Consumer Dispute Cases before the Consumer Forum and writ petitions before this Court, raising all sorts of disputes regarding almost every monthly bill. Be that as it is, the counter affidavit states that when Sri P.D.Prasad appeared before the Arbitrator, he was asked to furnish copies of authorization given by the Company and Partnership Deed to the Arbitrator's official address at Eluru. He failed to submit the same and did not even respond to the requisition of the Arbitrator. Thereafter the Arbitrator sent a letter dated 24-10-1998 to the petitioner at Vijayawada and the same was returned with an endorsement "firm abolished". Therefore, the Arbitrator assumed that the claim of Sri P.D.Prasad as authorized representative has become disputed and did not agree the same. The matter was considered with reference to the record produced by the Department and the award was passed to the effect that no rebate be allowed on any of the disputed bills dated 1-10-1990, 1-10-1991, 1-12-1992, 1-2-1993, 1-4-1993, 1-6-1993 and
1-8-1993. The Arbitrator also directed that the amount due on these bills be recovered from the petitioner within a month. The Arbitrator also observed as under.

Telephone No. VJ 66109 / 76725 has worked for the firm along with some other telephones. Regarding STD calls made on MLOE observations from 13-3-1993 to 15-3-1993 and from 28-6-1993 to 1-7-1993 has made clear that STD calls were tried and got on the said telephone though barred with diode equipment which was proved for its ineffectiveness by dialing zero often. Taking into account, the fortnightly meter readings showing the consistency in metering trend and daily metering trend during specified periods also lead to prove that the calling rate on the telephone is significantly high during the period of disputed periods. With these observations it can be concluded that the telephone is STD barred and their assertion, it is used as customer service telephone intended for receiving calls but not for making calls has become untrue. Bill dated 1-10-1990 is not taken into purview by the undersigned as the matter is already examined by the other Arbitrator and dismissed both by the forum and the Arbitrator much earlier.

I, K.V.Chalapathi Rao, Arbitrator and Director, Finance & Accounts, O/o.General Manager, Telecom. District, Eluru, after giving due consideration to the records placed before me by the Presenting Officer, the party's written statement and his non-responsiveness to produce the letter of authorization and copy of the partnership deed do hereby order that no rebate be allowed on any of the disputed bills dated 1-10-1991, 1-12-1992, 1-2-1993, 1-4-1993, 1-6-1993 and 1-8-1993 respectively. The amount due on these bills are due to be recovered from the party in a month's time from the date of service of this award.

The writ petition was filed some time in March, 1999 and this Court while admitting the writ petition on 8-3-1999 suspended the award of the Arbitrator. However, when the Department moved W.V.M.P.No.2722 of 2001 this Court modified the order on 1-10-2002. The interim order was made absolute subject to the petitioner depositing fifty percent of the bill amount as confirmed by the award within a period of six weeks from that date, in default of which the order shall stand vacated. No Memo or affidavit was filed by the petitioner to the effect that the order of this Court is complied with. Be that as it is, the only contention raised in the writ petition is that that the impugned award is violative of principles of natural justice and that proper opportunity was not given to the petitioner or petitioner's representative to put-forth their case.

The learned Additional Central Government Standing Counsel submits that the person who appeared before the Arbitrator did not produce proper authorization. Therefore, the Arbitrator sent a communication to the address of the petitioner, which was returned with an endorsement "firm abolished". Therefore, based on the record, the matter was decided by the Arbitrator, duly following the procedure.

The learned standing counsel also brought to the notice of this Court an unreported judgment of this Court passed in W.P.No.24374 of 1998, dated 1-9-1998 between **Dr. B.Hanumaiah v. Union of India and others** in support of the contention that when the Arbitrator has given cogent and valid reasons in exercise of powers under Article 226 of the Constitution of India, no interference is called for.

After perusing the material on record as well as the impugned award, I am satisfied that in the facts and circumstances of the case, the principles of natural justice have been sufficiently complied with. Indeed, no material is placed before this Court to show that Sri P.D. Prasad is an authorized representative of the petitioner company. The only explanation given is that the authorization given by the petitioner company to Sri P.D.Prasad was on the file of the Principal Subordinate Judge in O.P.No.259 of 1993. If such authorization was available, nothing prevented Sri P.D.Prasad to obtain return of the authorization from the said Court or to obtain another authorization and produce the same before the Arbitrator. It is not denied before this Court that the Arbitrator is entitled to hear only authorized representatives of the

companies and Sri P.D.Prasad did not produce any authorization before the Arbitrator. The Arbitrator has even taken pains to send a special notice to the petitioner company, which was returned with an endorsement “firm abolished”. Therefore, the order was passed having regard to the record produced by the Department. Therefore, there is no infirmity in the award passed.

The writ petition is devoid of merits and accordingly dismissed with costs.

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(V.V.S. RAO, J.)

Dt.19-08-2004.

Msr.

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.4531 of 1999

Dt.19-08-2004.

(Msr)